

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBERT G. BAKER

Plaintiff.

v.

CONNIE GIPSON, et al.,

Defendants.

CASE NO. 1:13-cv-01931-MJS (PC)

**ORDER (1) STRIKING DECLARATION
(ECF No. 20), AND (2) STRIKING
OBJECTIONS (ECF No. 22)**

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 42 U.S.C. § 1983. (ECF Nos. 7 & 10.) The action proceeds against Defendant Kitt on Plaintiff's Eighth Amendment inadequate medical care claim. (ECF No. 11.)

Defendant Kitt failed to timely answer the complaint and default was entered against him. (ECF Nos. 17 & 18.) On December 22, 2014, Defendant filed a motion to set aside entry of default. (ECF No. 19.) Thereafter, on January 12, 2015, Plaintiff filed a declaration detailing his encounters with Defendant Kitt and alleged ensuing injuries. (ECF No. 20.) On January 29, 2015, Defendant filed objections to Plaintiff's declaration. (ECF No. 22.) The Court granted Defendant's motion to set aside default on February 5, 2015. (ECF No. 23.)

Defendant's objections to Plaintiff's declaration were filed after entry of default, and before the default was set aside. (See ECF Nos. 18 & 23.) The entry of default cut

1 off Defendant's right to appear in this action. See Clifton v. Tomb, 21 F.2d 893, 897 (4th
2 Cir. 1927); see also Campos v. Fed. Home Loan Servs., No. 2:13-cv-494-MCE-EFB PS,
3 2013 WL 5375525 (Sept. 24, 2013) ("Entry of default against a defendant cuts off that
4 defendant's right to appear in the action or to present evidence."); Schwarzer et al.,
5 FEDERAL CIVIL PROCEDURE BEFORE TRIAL, ¶ 6:42 (2004). Accordingly,
6 Defendant's objections are improper and will be stricken.

7 Nevertheless, the Court cannot serve as a repository for the parties' evidence
8 (e.g., prison or medical records, affidavits, declarations, etc.). The parties may not file
9 evidence with the Court until the course of litigation brings the evidence into question (for
10 example, on a motion for summary judgment, at trial, or when requested by the Court).
11 Presently, no motions for summary judgment are before the Court, and no trial date has
12 been set. Plaintiff's motion for default judgment (ECF No. 15) was denied without
13 prejudice (ECF No. 19), and was not renewed. Therefore, Plaintiff's declaration will be
14 stricken.

15 Based on the foregoing, it is HEREBY ORDERED that:

- 16 1. Plaintiff's declaration (ECF No. 20) is STRICKEN from the record; and
17 2. Defendant's objections (ECF No. 22) are STRICKEN from the record.

18 IT IS SO ORDERED.
19

20 Dated: February 5, 2015

21 /s/ Michael J. Seng
22 UNITED STATES MAGISTRATE JUDGE
23
24
25
26
27
28